IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 27178 of 2007(I)

PETITIONER:

NEITHIYL ABDUL HAMEED, S/O.PAREEKUTTY,
AGED 55, RESIDING AT NEITHIYL HOUSE,
MOOLEPADAM ROAD, VAZHAKKALA, KAKKANAD (W) P.O.,
KOCHI - 30.

BY ADV. SRI.S.SREEKUMAR
SRI.S.VAIDYANATHAN

RESPONDENTS:

---

1. THE TRIKKAKARA GRAMA PANCHAYATH,
KAKKANAD, ERNAKULAM.

2. NAFEESA RASHEED, HOUSE NO.2/111,
KANNAMURI HOUSE, MOOLEPADAM ROAD,
VAZHAKKALA, KOCHI - 30.

R2 BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE
R1 BY ADV. SRI.S.SHANAVAS KHAN,SC.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 27178 OF 2007

Dated this the 1st day of October, 2007

JUDGMENT

Heard both sides. Sri.Martin Jose, on behalf of the petitioner submits that it is obvious that the road in question has not been notified for the purpose of Section 220 B and therefore the Panchayat cannot intervene with the present construction.

2. Mr.M.V.Bose, counsel for the party respondent would draw my attention to Ext.R2(b) statement filed by the Panchayat before the Ombudsman and also to Ext.R2(c) report which was received by the Panchayat in an enquiry conducted into the complaint which was submitted to the Panchayat by the party respondent. Mr.Bose submitted that the on going constructions are at a distance of only 75 cms from the residential house of the 2nd respondent and are obviously injurious to the interest of the 2nd respondent. Counsel also submitted that now that the Kerala Municipality Building Rules has been made applicable to the Panchayat, the construction violates KMBR, 1999 also.

3. The learned Government Pleader would submit that KMBR has been extended to this Panchayat only with effect from 16.11.06 and the rules as now extended will not apply to constructions which were commenced prior to that date. Since it is clear that the petitioner

commenced the construction at least on 08.11.06 when the 2nd respondent filed complaint, the argument that the constructions of the petitioner violates KMBR 1999 will not hold water. It appears to me from Ext.R2(b) that the 2nd respondent has some grievance about the on going constructions, but such grievances are to be voiced by the 2nd respondent before a competent civil court. I relegate the 2nd respondent to a competent civil court. Since Section 220 B does not apply to the road by the side of which constructions have been taken up, I quash Ext.P8. I dispose of the Writ Petition relegating the 2nd respondent to move a competent civil court. The interim order dt.12.09.07 permitting the petitioner to continue the construction at his risk will continue. The petitioner is reminded that if the civil court finds that the constructions made by him are violative of the civil rights of the 2nd respondent, he will have to remove those constructions.

The 2nd respondent will move the civil court within one month. If the 2nd respondent moves the civil court within that time, then the time during which the Writ Petition was pending before this court and the time taken till filing of the suit will be excluded by the court for the purpose of limitation invoking Section 14 of the Limitation Act.

PIUS C. KURIAKOSE, JUDGE

btt